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9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE CENTRAL DISTRICT OF CALIFORNIA
11

12 **SANDRA KIRKMAN AND CARLOS**
13 **ALANIZ, INDIVIDUALLY AND AS**
14 **SUCCESSORS-IN-INTEREST TO**
JOHN ALANIZ, DECEASED,

15 Plaintiffs,

16 v.

17 **STATE OF CALIFORNIA; RAMON**
18 **SILVA; AND DOES 1-10,**
INCLUSIVE,

19 Defendants,
20
21

Case No. 2:23-cv-07532-DMG-SSC

**DEFENDANTS' EX PARTE
APPLICATION FOR AN ORDER
SHORTENING TIME TO HEAR
MOTION TO WITHDRAW AS
COUNSEL [DOCS. 48 & 49]**

Judge: Honorable Dolly M. Gee
Trial Date: April 15, 2025
Action Filed: July 28, 2023

22 Defendants, State of California, acting by and through the California Highway
23 Patrol (CHP), and Officer Ramon Silva, respectfully move this Court for an *ex*
24 *parte* order shortening time to hear the Motion to Withdraw as Counsel that was
25 filed December 4, 2024. (Docs. 48 & 49.)

26 Defendants' counsel, the Office of the Attorney General seeks *ex parte* relief
27 on the following basis:

28 ///

- 1 1. Based on the upcoming deadlines and trial date, Defendants are moving for
2 an order shortening time to have this matter heard before the Court as soon
3 as possible.
- 4 2. In the event the motion to withdraw is granted, an order shortening time
5 will allow new counsel to come into the case and get up to speed as quickly
6 as possible to expedite the withdrawal as much as possible, including
7 allowing new counsel to handle the discovery that was the subject of this
8 Court's recent order granting a limited continuance to pursue additional
9 discovery into specific records (Doc. 45), as well as addressing the issues
10 arising out of the ethical conflict involving the records held and maintained
11 by the Department of Justice.
- 12 3. In the event the motion to withdraw is granted, an order shortening time
13 will also allow the effect of the transfer to be minimized, and would allow
14 the procedural and technical aspects of the transfer, including transferring
15 the case file, evidence and records, to the new counsel on an expedited
16 basis over the next few weeks, rather than occurring in January or February
17 of 2025.

18 Dated: December 6, 2024

Respectfully submitted,

19 ROB BONTA
20 Attorney General of California
21 NORMAN D. MORRISON
Supervising Deputy Attorney General

22 /s/ Ashley Reyes
23 ASHLEY REYES
24 Deputy Attorney General
25 *Attorneys for Defendants State of*
26 *California, acting by and through the*
California Highway Patrol, and
Officer Ramon Silva

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On December 4, 2024, Defendants' Counsel filed a Motion to Withdraw as Counsel due to a conflict of interest that ethically bars and prevent them from representing the Defendants in this action. (Docs. 48 & 49.) Due to the nature of the motion, as well as the upcoming deadlines, Defendants now request an order shortening time to hear the motion to minimize any effects of the withdrawal, should the Court grant the motion.

II. ARGUMENT

A. An Order Shortening Time is Appropriate Here Due to the Conflict and Upcoming Deadlines

Pursuant to Federal Rules of Civil Procedure Rule 6(c)(1)(c), a written motion and notice of the hearing must be served on all parties at least 14 days before the time specified for the hearing, with the following exceptions:

(A) When the motion may be heard *ex parte*;

(B) When these rules set a different time; or

(C) When a court order---which a party may, for good cause, apply for *ex parte*--sets a different time.

Defendants' counsel seeks this relief due to the conflict that has been identified, and the upcoming deadlines and trial date set forth in this Court's modified scheduling order. (Doc. 45)

In the present situation, the facts giving rise to the conflict and upcoming deadlines rise to the necessity of an order shortening time and demonstrated and alleged in the Motion to Withdraw as counsel, the Declaration of Deputy Attorney General Ashley Reyes filed under seal, and the Declaration of Lee Roistacher, filed December 4, 2025. (Docs. 48 & 49.) Briefly, the conflict of interest which has arisen between Defendants and counsel requires counsel to withdraw from representing the Defendants in this action. Counsel attempted to identify ethical and

1 legally permissible methods of waiving the conflict but are unable to do so.

2 Defendants' counsel has taken prompt action to inform its clients, who obtained
3 replacement counsel.

4 In light of the conflict of interest, the upcoming deadlines and trial date, and for
5 the reasons set forth in the Declaration of Deputy Attorney General Ashley Reyes,
6 Defendants' counsel, it is necessary for this motion to be heard on an expedited
7 basis.

8 An order shortening time will allow new counsel to come into the case and get
9 up to speed as quickly as possible to expedite the withdrawal as much as possible,
10 including allowing new counsel to handle the discovery that was the subject of this
11 Court's recent order granting a limited continuance to pursue additional discovery
12 into specific records, (Doc. 45) reviewing the case file and evidence prior to the
13 upcoming cutoff dates, participating in upcoming court proceedings, and preparing
14 for trial. Because the first available normally noticed hearing date is not until
15 January 2025, this would mean that new counsel would not be able to realistically
16 take over handling this case until sometime later in January 2025, as the case files
17 and evidence will need to be transferred over to replacement counsel and reviewed
18 by counsel. By advancing the hearing date on the motion to withdraw. Defendants'
19 counsel anticipates that the records, files and evidence will be able to be transferred
20 prior to the end of the year, and prior to the holiday period.

21 Accordingly, this Court should grant Counsel's application for an *ex parte*
22 Order Shortening Time.

23 **B. There Is No Prejudice to the Parties By Advancing the Hearing**
24 **Date On This Motion.**

25 Although Defendants' counsel anticipates that Plaintiffs will continue to
26 oppose the motion to withdraw, there is not prejudice to the parties by advancing
27 the hearing date. Significantly, no opposition has been filed by the Defendants'
28 clients in this case, and Defendants' clients have already identified substitute

1 counsel to replace the Attorney General's Office in this case as a result of this
2 conflict. Accordingly, no prejudice would arise to the Defendants in this case as a
3 result of either the request to advance the hearing on the motion, or by way of
4 ultimately granting the motion to withdraw filed by the Attorney General's Office.

5 Instead, the only opposition has been filed by the Plaintiffs, in response to the
6 motion to file under seal (Doc. 46), Plaintiffs' counsel has already filed what they
7 identify as their opposition to the motion to withdraw and have identified their
8 arguments relating to Defendants' counsel's motion to withdraw. None of the
9 arguments advanced by Plaintiffs in their opposition support a denial of the
10 Defendants' counsel's motion to withdraw, as the motion to withdraw is based
11 upon actual ethical conflicts that have arisen, and continue to exist, only recently.
12 Plaintiffs additionally have failed to identify any way by which they would be
13 actually prejudiced by the granting of the withdrawal motion, and Plaintiffs'
14 opposition to the withdrawal appears premised upon tactical considerations for trial,
15 including forcing the Attorney General's Office to continue representing the
16 Defendants in this case despite the existence of a recognized ethical conflict, rather
17 than actual considerations of actual prejudice to their clients. Granting this request
18 would actually serve to further this case along more quickly toward trial
19 preparation, to the benefit of all parties.

20 **LOCAL RULE 7-19 COMPLIANCE**

21 Prior to filing this *ex parte* application, defense counsel contacted Plaintiffs'
22 counsel of record, Shannon Leap, of the Law Offices of Dale Galipo, located at
23 21800 Burbank Boulevard, Suite 310, Woodland Hills, California, 91367, (818)
24 347-333, (sleap@galipolaw.com), in compliance with Local Rule 7-19 through 7-
25 19.1. (Reyes Decl., ¶6.)

26 It is Defendants' understanding that Plaintiffs will not oppose this
27 Application but have requested that their office have time to file an opposition to
28 the motion to withdraw by December 13, 2024, and a hearing date on or before

December 20, 2024. (*Id.*) Defendants are filing this application due to the current conflict of interest, as well as the upcoming deadlines and trial date.

III. CONCLUSION

For the reasons set forth above, this Court should grant Defendants' Motion for an *ex parte* application for an Order Shortening Time.

Dated: December 6, 2024

Respectfully submitted,

ROB BONTA
Attorney General of California
NORMAN D. MORRISON
Supervising Deputy Attorney General

/s/ Ashley Reyes
ASHLEY REYES
Deputy Attorney General
*Attorneys for Defendants State of
California, acting by and through the
California Highway Patrol, and
Officer Ramon Silva*

CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Defendants, certifies that this brief contains 986 words, which complies with the word limit of L.R. 11-6.1.

Dated: December 6, 2024

Respectfully submitted,

ROB BONTA
Attorney General of California

/s/ Ashley Reyes
ASHLEY REYES
Deputy Attorney General
*Attorneys for Defendants State of
California, acting by and through the
California Highway Patrol, and
Officer Ramon Silva*

CERTIFICATE OF SERVICE

Case Name: **Sandra Kirkman, et al. v. State
of California, et al.**

No. **2:23-cv-07532-DMG-SSC**

I hereby certify that on December 6, 2024, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

**DEFENDANTS' EX PARTE APPLICATION FOR AN ORDER SHORTENING TIME
TO HEAR MOTION TO WITHDRAW AS COUNSEL [DOCS. 48 & 49]**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on December 6, 2024, at Fresno, California.

Carrie Vue
Declarant

/s/ Carrie Vue
Signature